

## **2013 DRAFTING REQUEST**

### **Bill**

Received: <b>3/15/2013</b>	Received By: <b>agary</b>
Wanted: <b>As time permits</b>	Same as LRB:
For: <b>Jill Billings (608) 266-5780</b>	By/Representing: <b>Kathy Divine</b>
May Contact:	Drafter: <b>agary</b>
Subject: <b>Transportation - mass trnst/rail</b>	Addl. Drafters:
	Extra Copies: <b>EVM</b>

Submit via email:     **YES**  
Requester's email:     **Rep.Billings@legis.wisconsin.gov**  
Carbon copy (CC) to:     **aaron.gary@legis.wisconsin.gov**

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Railroad safety; track clearance and railroad walkways

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### **Instructions:**

See attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 4/3/2013			_____			
/P1	agary 4/23/2013	scalvin 4/11/2013	jmurphy 4/11/2013	_____	srose 4/11/2013		State
/P2	agary 5/3/2013	scalvin 4/23/2013	jfrantze 4/23/2013	_____	srose 4/23/2013		State

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/P3	agary 5/3/2013	scalvin 5/3/2013	phenry 5/3/2013	_____	srose 5/3/2013		State
/1		wjackson 5/3/2013	rschluet 5/3/2013	_____	lparisi 5/3/2013	lparisi 11/18/2013	State

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<END>

@ intro.

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	1P3 sac 05/03/2013		5/3 ph	X			

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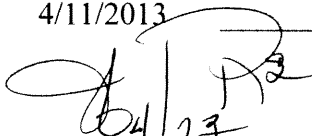
## **Topic:**

Railroad safety; track clearance and railroad walkways

## **Instructions:**

See attached

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FE Sent For:		P2 sac 04/23/2013					

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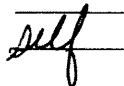
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FE Sent For:

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## Gary, Aaron

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**From:** Divine, Kathy  
**Sent:** Tuesday, March 26, 2013 9:30 AM  
**To:** Gary, Aaron  
**Subject:** RE: Drafting request: RR walkways

Aaron,

Here is what I have. I don't have the actual bill, only the statutes. If you need me to track down the bill let me know.

Thanks,

Kathy

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**From:** Gary, Aaron  
**Sent:** Monday, March 25, 2013 7:00 PM  
**To:** Divine, Kathy  
**Subject:** RE: Drafting request: RR walkways

Hi Kathy,

Can you send me (by scan or interD) a copy of the MN bill and/or stats that you want me to use as a model? When I tried to find them online, it looked like SF 1534 from the 07-08 session was not enacted and the provisions in SF 1534 didn't seem to line up with the statutes referenced below. So I am not sure if I am accessing the right info online and perhaps it would be the safer route to just have you send me a copy.

Thanks. Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

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**From:** Divine, Kathy  
**Sent:** Friday, March 15, 2013 2:48 PM  
**To:** Gary, Aaron  
**Subject:** RE: Drafting request: RR walkways

Aaron,

Here is what I'm looking at to draft, modeling after the MN state law.

The bill was 2007-2008 session S.F. 1534

MN Statutes that were changed were; 219.45, 219.46; 219.47; 219.50; 219.501; 219.51; 219.52; 219.53

I do have a big folder of these all printed out that I was given, if that is something you need. But thought this might be what you need for now.

Thank you, call if you have questions.

Kathy

Kathy Divine  
Office of State Representative Jill Billings  
Assembly District 95  
State Capitol – 307W  
608-266-5780  
888-534-0095  
[kathy.divine@legis.wisconsin.gov](mailto:kathy.divine@legis.wisconsin.gov)

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**From:** Gary, Aaron  
**Sent:** Thursday, March 14, 2013 6:08 PM  
**To:** Divine, Kathy  
**Subject:** Drafting request: RR walkways

Hi Kathy,

I was out of the office most of the day. Yes, I would be the drafter if it relates to safety and RR walkways. Please send the request to me or give me a call. I should note that there are some preemption issues with federal law in this area. Do you know if anybody has looked at the federal preemption issue? If so, I would appreciate seeing the results of their research so I don't duplicate efforts. If not, I will look into the issue while I'm drafting.

Thanks. Aaron

Aaron R. Gary  
Attorney, Legislative Reference Bureau  
608.261.6926 (voice)  
608.264.6948 (fax)  
[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

## **2009 Minnesota Statutes**

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### **219.45 APPLICABILITY.**

Sections 219.45 to 219.53 apply to a person, corporation, or anyone owning, operating, or maintaining a structure or obstruction adjacent to railway tracks and to a corporation, receiver of the corporation, or any person while engaged as a common carrier in the transportation by railroad of passengers or property to which the regulative powers of this state extend, except a railway operated by the electric trolley system.

**History:** (4753) 1913 c 307 s 1; 1937 c 238 s 1; 1985 c 265 art 4 s 1

## 2009 Minnesota Statutes

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### 219.46 UNLAWFUL STRUCTURE; CLEARANCE.

Subdivision 1. **Structure.** (a) On and after April 16, 1913, it is unlawful for a common carrier or any other person, on a standard gauge road on its line or a standard gauge sidetrack, for use in any traffic mentioned in section 219.45:

(1) to erect or reconstruct and maintain an adjoining warehouse, coal chute, stock pen, pole, mail crane, standpipe, hog drencher, or any permanent or fixed structure or obstruction within eight feet of the centerline of the track or sidetrack;

(2) in excavating, to allow an adjoining embankment of earth or natural rock to remain within eight feet of the centerline of the track or sidetrack; or

(3) to erect or reconstruct overhead wires, bridges, viaducts or other obstructions passing over or above its tracks at a height less than 21 feet, measured from the top of the track rail.

(b) If after May 1, 1943, overhead structures or platforms or structures designed only to be used in the loading or unloading of cars are rebuilt or remodeled, then these overhead structures must be built with an overhead clearance of not less than 22 feet from the top of the rail. These structures or platforms must be built with a side clearance of not less than 8-1/2 feet from the centerline of the track unless by order the commissioner may provide otherwise.

(c) Sections 219.45 to 219.53 do not apply to yards and terminals of depot companies or railway companies used only for passenger service. If personal injury is sustained by an employee of a depot company or railway company used only for passenger service, by reason of noncompliance with sections 219.45 to 219.53, that employee, or in case of the employee's death, the personal representative, has the rights, privileges, and immunities enumerated in section 219.53.

(d) On and after May 1, 1943, it is unlawful for a common carrier or any other person, on a standard gauge road on its line or a standard gauge sidetrack or spur, for use in any traffic mentioned in section 219.45:

(1) to erect or construct and maintain an adjoining warehouse, coal chute, stock pen, pole, mail crane, standpipe, hog drencher, or any permanent or fixed structure or obstruction within 8-1/2 feet of the centerline of the track;

(2) in excavating, to allow an adjoining embankment of earth or natural rock to remain within 8-1/2 feet of the centerline of the track or sidetrack; or

(3) to erect or construct overhead wires, bridges, viaducts, or other obstructions passing over or above its tracks at a height less than 22 feet, measured from the top of the track rail.

Subd. 2. **Clearance on parallel tracks.** (a) On and after May 1, 1943, it is unlawful for a common carrier to construct track used for moving cars engaged in the movement of

traffic if the centerline of the track is within 14 feet from the centerline of any other parallel track which it adjoins.

(b) In addition, no ladder tracks may be closer to an adjacent ladder track than 19 feet measured from the centerline of each track, nor closer to any other parallel track than 17 feet measured from the centerline of each track.

(c) The distance between tracks may be diminished or closed up a necessary distance for track intersections, gauntlet tracks, turnouts, or switch points.

**Subd. 3. May maintain existing structure.** A common carrier or any other person may maintain an overhead structure or structure alongside of a track referred to in this section and section 219.45 if the structure was not erected in violation of law.

**Subd. 4. May maintain existing tracks.** (a) A common carrier or any other person may:

(1) maintain or reconstruct presently existing tracks constructed after April 16, 1913, in accordance with the then-existing clearance law;

(2) maintain or reconstruct tracks which, if constructed before April 16, 1913, were constructed with clearances as provided in Laws 1913, chapter 307; or

(3) maintain or reconstruct tracks built in accordance with Laws 1913, chapter 448.

(b) As to tracks that were constructed with a clearance less than 13 feet between centerlines before April 16, 1913, the maintenance of a clearance of less than 13 feet between centerlines in railroad switching yards may create a hazard. The commissioner may require adequate and safe clearances as rapidly as possible in the yards on petition by an affected party, after hearing, and where a greater clearance can be reasonably provided.

**Subd. 5. May extend existing yard tracks.** It is not unlawful to extend existing yard tracks or other tracks at the clearance which now exists between them if the tracks were constructed either before or after April 16, 1913, with clearances as provided in Laws 1913, chapter 307.

**Subd. 6. May maintain additional tracks.** It is not unlawful to construct or maintain additional tracks at less than the required clearance on or under existing bridges which were constructed after April 16, 1913, with clearances as provided in Laws 1913, chapter 307.

**Subd. 7. Order for less clearance.** The commissioner of transportation after a hearing may authorize, in the construction and reconstruction of bridges and tunnels, by general order (1) a clearance less than 8-1/2 feet from the centerline of the track at a height not to exceed six feet above the top of the rail, and (2) a clearance less than 8-1/2 feet from the centerline of the track at a point not less than 14-1/2 feet above the top of the rail.

**History:** (4754) 1913 c 307 s 2; 1915 c 171 s 1; 1937 c 238 s 2; 1943 c 390 s 1-7; 1971 c 25 s 67; 1976 c 166 s 39-41; 1980 c 534 s 40; 1985 c 265 art 4 s 1; 1986 c 444;

1998 c 403 s 29



## **2009 Minnesota Statutes**

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### **219.47 CLEARANCE EXCEPTIONS.**

Subdivision 1. **Permanent.** The commissioner of transportation, upon application made, after a thorough investigation, may permit a common carrier, person, or corporation to which sections 219.45 to 219.53 apply, to erect an overhead or side obstruction closer to the track than provided for in section 219.46, to construct track at less clearance than provided for in section 219.46, and to reconstruct and maintain them when in the judgment of the commissioner compliance with the clearance prescribed in section 219.46 is unreasonable or unnecessary or the erection or construction of the overhead or side obstruction or tracks or the reconstruction and maintenance of them at less clearance than provided in section 219.46 will not create a condition unduly hazardous to the employees of that common carrier, person, or corporation. Before taking final action on the application, the commissioner need conduct only those hearings or other proceedings as it finds necessary for the resolution of the material issues raised by the application.

Subd. 2. **Temporary.** The commissioner, upon application made, may grant temporary clearance variances, with appropriate safeguards and without hearing, for statutory encroachments resulting from emergency or temporary construction situations.

**History:** (4755) 1913 c 307 s 3; 1915 c 171 s 2; 1937 c 238 s 3; 1943 c 390 s 8; 1971 c 25 s 67; 1976 c 166 s 42; 1980 c 460 s 21; 1980 c 534 s 41; 1985 c 265 art 4 s 1; 1986 c 468 s 3; 1998 c 403 s 29

## **2009 Minnesota Statutes**

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### **219.50 OBSTRUCTING SPACE BETWEEN TRACKS.**

It is unlawful for a common carrier, person, or corporation subject to sections 219.44 to 219.52 to permit the space between or beside tracks that is ordinarily used by employees in the discharge of their duties and is within 8-1/2 feet of the centerline of the track, to become or remain obstructed by a foreign obstacle that will interfere with the work of the employees or subject the employees to unnecessary hazard. This space between or beside the tracks and between the rails of the tracks must be kept in a condition as to permit the employees to pass over or between the tracks or to use the space day or night and under all weather conditions without unnecessary hazard.

**History:** (4758) 1913 c 307 s 6; 1913 c 448 s 1; 1980 c 460 s 22; 1985 c 265 art 4 s

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## **2009 Minnesota Statutes**

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### **219.501 RAIL CARRIER WALKWAYS.**

Subdivision 1. **Duty to provide walkways.** (a) Rail carriers must provide walkways adjacent to those portions of yard tracks where rail carrier employees frequently work on the ground performing switching activities. For purposes of this section, "frequently work" means at least five days per week, one shift per day.

(b) This section applies to reconstruction and new construction of yard track completed after July 1, 2008.

(c) This section does not apply to an entity that owns or operates track in this state other than class one and class two rail carriers as classified by the Federal Railroad Administration.

Subd. 2. **General requirements.** (a) Walkways constructed pursuant to this section may be surfaced with asphalt, concrete, planking, grating, native material, crushed material, or other similar nonrevenue material. When crushed material is used, 100 percent of the material must be capable of passing through a 1-1/2-inch square sieve opening, and at least 90 percent of the material must be capable of passing through a one-inch square sieve opening provided, however, a de minimus variation is not a violation of this section where the rail carrier has made a good faith effort to comply with the percentage requirements. Smaller crushed material is preferable, where drainage and durability issues do not arise. Material that is three-quarter inch or less in size is recommended for switching lead tracks.

(b) Walkways must have a reasonably uniform surface and must be maintained in a safe condition without compromising track drainage.

(c) Cross slopes for walkways must not exceed one inch of elevation for each eight inches of horizontal length in any direction.

(d) Walkways must be a minimum width of two feet.

(e) Walkways regulated under this section must be kept reasonably clear of spilled fuel, oil, sand, posts, rocks, and other hazards or obstructions.

Subd. 3. **Allowances for unusual conditions.** Rail carriers are not required to comply with the requirements of this section during (1) maintenance activities or any period of heavy rain or snow, derailments, rock and earth slides, washouts, and similar weather or seismic conditions, and (2) during a reasonable period after any occurrences identified in clause (1) in order to allow a return to compliance.

Subd. 4. **Waiver of requirements.** Upon written request of a rail carrier, the commissioner may waive any portion of this section where conditions do not reasonably allow compliance. A decision of the commissioner is subject to the requirements under section 218.041.

**History:** 2008 c 350 art 2 s 1

## **2009 Minnesota Statutes**

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### **219.51 VIOLATIONS AND PENALTIES.**

Subdivision 1. **Violation.** A common carrier, corporation, or person subject to sections 219.45 to 219.53 violating any of the provisions of those sections, is liable to a penalty of not more than \$500 for each violation.

Subd. 2. **Failure to correct.** If a common carrier, person, or corporation (1) fails to correct a violation of sections 219.45 to 219.53 when ordered by the commissioner of transportation within the time provided in the order, and (2) does not appeal the order, then failure to correct the violation as ordered by the commissioner constitutes a new and separate offense distinct from the original violation of sections 219.45 to 219.53.

Subd. 3. **Duties of attorney general.** The penalty must be recovered in a suit brought in the name of the state by the attorney general in a court having jurisdiction in the locality where the violation was committed. Under the direction of the commissioner, the attorney general shall bring suit upon receipt of duly verified information from any person of a violation being committed. The commissioner shall lodge with the attorney general information of any violation as may come to their knowledge.

Subd. 4. **Walkway orders.** When the commissioner finds that rail carrier employees who frequently work adjacent to a portion of track performing switching activities are exposed to safety hazards due to the lack of a walkway or to the condition of a walkway constructed before July 1, 2008, the commissioner may, under the provisions of this section, order a rail carrier to construct a walkway adjacent to a portion of track where employees are performing switching activities, or require a rail carrier to modify an existing walkway in conformance with the standards set forth in section 219.501, within a reasonable period of time.

Subd. 5. **Filing of complaints.** No formal complaint of an alleged violation of sections 219.45 to 219.53 may be filed until the filing party has attempted to address the alleged violations with the rail carrier. Any complaint of an alleged violation must contain a written statement that the filing party has made a reasonable, good faith attempt to address the alleged violation.

**History:** (4759) 1913 c 307 s 7; 1937 c 238 s 4; 1971 c 25 s 67; 1976 c 166 s 43; 1980 c 534 s 42; 1985 c 265 art 4 s 1; 1998 c 403 s 29; 2008 c 350 art 2 s 2

## **2009 Minnesota Statutes**

### **219.52 WARNING SIGN; REPORTING CLEARANCE VIOLATIONS.**

If a structure is nearer the track than as provided by sections 219.45 to 219.53, the commissioner of transportation shall provide for warning signs to be placed on it of a design and type as the commissioner considers proper unless the commissioner determines a sign is unnecessary. Railroad inspectors of the Department of Labor and Industry shall report to the commissioner and attorney general any violation of sections 219.45 to 219.53 of which they may obtain knowledge.

**History:** (4760) 1913 c 307 s 8; 1937 c 238 s 5; 1971 c 25 s 67; 1976 c 166 s 44; 1980 c 460 s 23; 1980 c 534 s 43; 1985 c 265 art 4 s 1; 1998 c 403 s 29

## **2009 Minnesota Statutes**

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### **219.53 CONTRIBUTORY NEGLIGENCE.**

(a) An employee of a common carrier who, while performing duties and engaged in any commerce mentioned in section 219.45, subject to the regulative provisions of sections 219.45 to 219.53, is injured or killed by reason of (1) a violation of section 219.50, (2) a structure or obstruction erected or maintained before the passage of or in violation of sections 219.45 to 219.53, or (3) a structure or obstruction erected or maintained in closer proximity to the rails than provided in sections 219.45 to 219.53 shall not be deemed to have assumed the resultant risk or to have been guilty of contributory negligence although the employee continued in the employ of the common carrier after becoming aware of the use of the permanent overhead or side structure or obstruction mentioned in sections 219.45 to 219.53.

(b) An exercise of the permission provided for in section 219.47 is at the sole risk of the carrier.

**History:** (4761) 1913 c 307 s 9; 1985 c 265 art 4 s 1



State of Wisconsin  
2013 - 2014 LEGISLATURE

in  
4/3



LRB-1916/P1

ARG:):....

Sac

RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-Note

- 1 **AN ACT** *gen act*; **relating to:** railroad track clearance and railroad walkways and
- 2 providing a penalty.

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***Analysis by the Legislative Reference Bureau***

Under current law, most of this state's regulatory authority over railroads resides with the Office of Commissioner of Railroads (OCR), which is generally charged with receiving complaints, conducting hearings, and entering orders related to railroad operations and safety.

Under current law, unless an exception applies, no building or loading platform may be constructed or reconstructed that has a horizontal clearance of less than 8.5 feet between it and the center line of a railroad track. The same horizontal clearance is also required with respect to any material used in and about the construction of a building or loading platform. Certain exceptions apply to platforms at passenger stations used for loading and unloading passengers, baggage, and mail and platforms for handling baggage, mail, and freight to and from cars on other than main tracks. Subject to specified exceptions, a railroad or shipper may not do any of the following: 1) place or construct, within 8.5 feet of the center line of any railroad track, any retaining walls, fences, signs, conveyors, or similar obstructions; or 2) permit, within 8.5 feet of the center line of any railroad track, the accumulation of waste or other material. However, OCR may exempt structures or materials from these horizontal clearance requirements if OCR finds that doing so will not imperil life or limb and that the public interest requires or permits the exemption from these requirements. Any railroad or shipper that violates these horizontal clearance requirements, or that fails, neglects, or refuses to obey a lawful order of OCR, must forfeit not less than \$100 nor more than \$200.

Current law also prohibits the construction or reconstruction, after December 31, 1993, of any overhead structure that has a vertical clearance of less than 23 feet above the top of the rail of a railroad track. However, OCR may exempt an overhead structure from this minimum vertical clearance requirement if OCR finds that the structure will not imperil life or limb and that the public interest requires or permits the structure to be exempted from the vertical clearance requirement. Telltales (arrangements of long strips of rope, wire, or other material hanging from a bar over railroad tracks to warn of an upcoming low overhead structure) are generally not required above railroad tracks unless required under federal law or unless OCR orders installation of a telltale after finding that the absence of a telltale would create an unreasonable risk of harm to the public or a railroad employee on a railroad not under the jurisdiction of the Federal Railroad Administration (FRA). An employee of a railroad who is injured by or because of the existence of a bridge or other structure over railroad tracks at a height less than 23 feet, which has not been protected by telltales, is not to be considered to have assumed the risk of the injury.

Also under current law, whenever a complaint is made with OCR that a railroad bridge lacks walks or railings and is therefore dangerous to railroad employees and the safety of these employees requires alteration of the bridge to provide for walks and railings, or OCR determines that the safety of railroad employees requires the alteration of a railroad bridge, OCR must hold a hearing. After the hearing, OCR may order alteration of the bridge, at the railroad's expense.

This bill requires railroads to provide walkways adjacent to those portions of yard tracks where railroad employees frequently work on the ground performing switching activities. These walkways must meet certain requirements, including that they be at least two feet wide, be maintained in a safe condition, be free of hazards and obstructions, and be surfaced with certain types of materials. These walkway requirements generally apply only to new construction and reconstruction of yard track completed after the bill's effective date (which is approximately six months after enactment) and only to class one and class two rail carriers as classified by the FRA. There are certain exceptions to these walkway requirements and OCR may also waive these requirements under specified circumstances. OCR may also impose these walkway requirements by order if OCR finds that railroad employees who frequently work adjacent to a portion of track performing switching activities are exposed to safety hazards due to the lack of a walkway or to the condition of a walkway constructed on or before the bill's effective date. A railroad that violates these walkway requirements or fails to obey an order made by OCR must forfeit \$500 for each violation.

The bill also creates additional horizontal clearance requirements for railroads. Under the bill, with limited exceptions, a railroad may not construct or reconstruct, after the bill's effective date, any of the following: 1) any railroad track used for moving cars engaged in the movement of traffic the center line of which is within 14 feet from the center line of any other parallel track to which it adjoins; 2) any ladder track closer than 19 feet to an adjacent ladder track, as measured from the center line of each track; or 3) any ladder track closer than 17 feet to any other parallel track,



as measured from the center line of each track. A railroad also may not permit the space between or beside any railroad tracks that is ordinarily used by employees in the discharge of their duties and that is within 8.5 feet of the center line of the track to become or remain obstructed by a foreign obstacle that will interfere with the work of the employees or subject the employees to any unnecessary hazard. The bill also provides that an employee of a railroad who is injured by or because of the existence of a structure or materials within a distance from tracks that is less than the required horizontal clearance is not be considered to have assumed the risk of the injury.

The bill also specifies that, for purposes of required vertical clearance over railroad tracks, wires are overhead structures.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           <sup>x</sup>  
**SECTION 1.** 192.31 (3) of the statutes is amended to read:

2           192.31 (3) After December 31, 1993, no overhead structure, including wires,  
3           shall be constructed or reconstructed, not including ordinary repairs necessary for  
4           maintenance, which shall have a vertical clearance of less than 23 feet above the top  
5           of rail, except as provided in sub. (4).

History: 1981 c. 347 s. 80 (1); 1983 a. 192; 1993 a. ~~16~~, 123, 482; 2005 a. 179.

6           **SECTION 2.** 192.51 of the statutes is created to read:

7           **192.51 Railroad walkways.** (1) In this section, “frequently work” means to  
8           work at least 5 days per week, one shift per day.

9           (2) Railroad companies shall provide walkways adjacent to those portions of  
10          yard tracks where railroad company employees frequently work on the ground  
11          performing switching activities.

12          (3) Walkways required under sub. (2) shall satisfy all of the following:

13          (a) Be surfaced with asphalt, concrete, planking, grating, native material,  
14          crushed material, or other similar material. If crushed material is used, 100 percent  
15          of the material shall be capable of passing through a 1.5 inch square sieve opening

1 and at least 90 percent of the material shall be capable of passing through a one inch  
2 square sieve opening, except that a de minimus variation is permissible if the  
3 railroad company has made a good faith effort to comply with these requirements.

4 (b) Have a reasonably uniform surface and be maintained in a safe condition  
5 without compromising track drainage.

6 (c) Be at least 2 feet wide.

7 (d) Be kept reasonably clear of spilled fuel, oil, sand, posts, rocks, and other  
8 hazards or obstructions.

9 (e) For walkways having cross slopes, have cross slopes not exceeding one inch  
10 of elevation for each 8 inches of horizontal length in any direction.

11 (4) (a) Railroad companies are not required to comply with subs. (2) and (3)  
12 during any of the following:

13 1. Maintenance activities.

14 2. Any period of heavy rain or snow, derailments, rock and earth slides,  
15 washouts, or similar weather or seismic conditions.

16 3. Any period, after an occurrence identified in subd. 1. or 2., reasonably  
17 necessary to allow the railroad company to return to compliance with subs. (2) and  
18 (3).

19 (b) Upon written application by a railroad company, the office may waive any  
20 portion of sub. (2) or (3) if the office finds that conditions do not reasonably allow  
21 compliance by the railroad company with subs. (2) and (3). If the office waives any  
22 portion of sub. (2) or (3), the findings and order of the office shall set forth, in writing,  
23 the grounds for the waiver and each specific provision of subs. (2) and (3) being  
24 waived.

1           (5) (a) Except as provided in pars. (b) and (c), this section applies to new  
2 construction and reconstruction of yard track completed after the effective date of  
3 this paragraph .... [LRB inserts date].

4           (b) This section does not apply to a railroad company that owns or operates  
5 track in this state other than class one and class two rail carriers as classified by the  
6 ~~Federal Railroad Administration.~~

7           (c) 1. If the office finds that railroad company employees who frequently work  
8 adjacent to a portion of track performing switching activities are exposed to safety  
9 hazards due to the lack of a walkway or to the condition of a walkway constructed  
10 on or before the effective date of this paragraph .... [LRB inserts date], the office may  
11 order a railroad company to construct a walkway adjacent to a portion of track where  
12 employees are performing switching activities, or require a railroad company to  
13 modify an existing walkway in conformity with the standards set forth in sub. (3),  
14 within a reasonable period of time. Before the office may enter an order under this  
15 paragraph, the office shall give notice to the railroad company and hold a hearing in  
16 the manner provided in ss. 195.04 to 195.043. After the hearing, the office shall  
17 determine what walkway construction or modification, if any, shall be made. The  
18 expense of any walkway construction or modification shall be borne by the railroad  
19 company.

20           <sup>x</sup>  
**SECTION 3.** 192.53 (1) of the statutes is amended to read:

21           192.53 (1) Except as otherwise provided in this section, no building or loading  
22 platform shall be constructed nor shall any addition to or reconstruction of an  
23 existing building or loading platform, excluding ordinary repairs necessary for  
24 maintenance, be made that shall have a horizontal clearance of less than 8 feet 6  
25 inches between it and the center line of any railroad track. The same clearance shall

1 be maintained between the center line of the railroad track and any material used  
2 in and about the construction of any such building or loading platform, including any  
3 excavated earth or rock.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 ~~a.~~ 254; 2005 a. 179.

4 **SECTION 4.** 192.53 (4) (b) of the statutes is amended to read:

5 192.53 (4) (b) The office shall make the findings described in par. (a) only upon  
6 written application to it to exempt the construction or reconstruction of a structure  
7 from the requirements of this section, setting forth fully the grounds therefor, and  
8 only after public hearing held upon notice to all interested parties except that, if no  
9 objection is filed with the office within 20 days of the notice, the office may authorize  
10 the exemption without hearing. The office's findings and order granting the  
11 exemption shall be in writing and shall contain complete provisions and  
12 requirements as to the horizontal clearance to be maintained in the construction or  
13 reconstruction. The structure shall be constructed or reconstructed only in  
14 compliance with the office's order. The office's order may require that warning signs,  
15 of a design and type prescribed by the office, be placed on the structure.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 ~~a.~~ 254; 2005 a. 179.

16 **SECTION 5.** 192.53 (5) (a) 2. of the statutes is amended to read:

17 192.53 (5) (a) 2. Permit, within 8 feet 6 inches of the center line of any railroad  
18 track, the accumulation of any rubbish, waste, excavated earth or rock, or material  
19 of any sort, except material used for repair or construction work by the railroad  
20 company.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 ~~a.~~ 254; 2005 a. 179.

21 **SECTION 6.** 192.53 (5e), (5m), and (5s) of the statutes are created to read:

22 192.53 (5e) (a) After the effective date of this paragraph .... [LRB inserts date],  
23 except as provided in par. (b), no railroad company may construct or reconstruct, not  
24 including ordinary repairs necessary for maintenance, any of the following:

1           1. Any railroad track used for moving cars engaged in the movement of traffic  
2           the center line of which is within 14 feet from the center line of any other parallel  
3           track to which it adjoins.

4           2. Any ladder track closer than 19 feet to an adjacent ladder track, as measured  
5           from the center line of each track.

6           3. Any ladder track closer than 17 feet to any other parallel track, as measured  
7           from the center line of each track.

8           (b) The distance under par. (a) between tracks may be diminished or closed up  
9           a necessary distance for track intersections, gauntlet tracks, turnouts, or switch  
10          points.

11          (5m) No railroad company may permit the space between or beside any  
12          railroad tracks that is ordinarily used by employees in the discharge of their duties  
13          and that is within 8 feet 6 inches of the center line of the track to become or remain  
14          obstructed by a foreign obstacle that will interfere with the work of the employees  
15          or subject the employees to any unnecessary hazard. This space between or beside  
16          the tracks and between the rails of the tracks shall be kept in such a condition as to  
17          permit the employees to pass over or between the tracks or to use the space day or  
18          night and under all weather conditions without any unnecessary hazard.

19          (5s) An employee of a railroad company who is injured by or because of the  
20          existence of any structure or material within a distance from tracks that is less than  
21          that required by this section shall not be considered to have assumed the risk of the  
22          injury, although the employee continues in the employ of the railroad company after  
23          the existence of the structure or material has been brought to the employee's  
24          knowledge.

25          SECTION 7. 192.55<sup>y</sup> (8) of the statutes is created to read:

192.55 (8) Any railroad company that violates s. 192.51 or that fails, neglects, or refuses to obey any lawful order made by the office under s. 192.51 shall forfeit \$500 for each violation.

**SECTION 8. Effective date.**

(1) This act takes effect on the first day of the 7th month beginning after publication.

**(END)**

D-Note

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1916/P1dn

ARG::):....

*See*

- date -

ATTN: Kathy Divine

Please review the attached draft carefully to ensure that it is consistent with your intent.

The attached draft is based on the provisions of Minnesota law provided to me. Many of these provisions are already covered under Wisconsin law, particularly ss. 192.31 and 192.53, Wis. Stats. The attached draft reflects my attempt to identify and incorporate the substantive, but not stylistic or structural, differences in the two states' laws.

Most penalties for violation of railroad safety provisions are specified in ss. 192.54 and 192.55, stats. However, the penalty for violating s. 192.53 is specified in s. 192.53 (6), stats. I note that these penalties are less than the \$500 penalty specified under Minnesota law. Do you want me to amend any of these penalty provisions?

I have no real-world experience with railroad operations and am not familiar with many of the terms and concepts in this draft. I highly recommend that the draft be reviewed by OCR. Also, as we discussed, certain aspects of state regulation of railroads, including some safety regulation, are preempted by federal law. (A lengthy description of federal regulation can be found in the analysis to 2005 AB-588.) I conducted some research and did not find that any of the provisions in this draft are preempted by federal law. However, you may wish to also have this draft reviewed by the FRA to advise whether any of the provisions in this draft are likely to be preempted.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1916/P1dn  
ARG:sac:jm

April 11, 2013

ATTN: Kathy Divine

Please review the attached draft carefully to ensure that it is consistent with your intent.

The attached draft is based on the provisions of Minnesota law provided to me. Many of these provisions are already covered under Wisconsin law, particularly ss. 192.31 and 192.53, Wis. Stats. The attached draft reflects my attempt to identify and incorporate the substantive, but not stylistic or structural, differences in the two states' laws.

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Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: aaron.gary@legis.state.wi.us



**Gary, Aaron**

---

**From:** Divine, Kathy  
**Sent:** Monday, April 22, 2013 11:11 AM  
**To:** Gary, Aaron  
**Subject:** FW: LRB - 1916

Aaron,

Here is a note back regarding your questions.

Kathy

---

**From:** Larry Mann [mailto:lm.mann@verizon.net]  
**Sent:** Monday, April 22, 2013 11:11 AM  
**To:** Divine, Kathy; Craig Peachy  
**Subject:** Re: LRB - 1916

\* [ Kathy, on pg.3 the answer to the 12/31/93 issue is yes. Regarding the underlining on p.6, the underlining should be stricken. Thanks for your help.

**From:** Divine, Kathy  
**Sent:** Monday, April 22, 2013 12:02 PM  
**To:** Craig Peachy ; lm.mann@verizon.net  
**Subject:** FW: LRB - 1916

Craig/Larry,

See below in red for some of the questions answered by Aaron Gary the attorney drafting the safe walkways legislation. If you can review and let me know your thoughts that would be appreciated, so Mr. Gary can continue revising the draft.

Thanks,

Kathy

Kathy Divine  
Office of State Representative Jill Billings  
Assembly District 95  
State Capitol – 307W  
608-266-5780  
888-534-0095  
[kathy.divine@legis.wisconsin.gov](mailto:kathy.divine@legis.wisconsin.gov)

Craig, I have a number of suggestions regarding the draft bill you sent to me. Theses are:  
On pg. 3 line 2, “December 31, 1993” should be a current date. [I can’t really change this date, which is in current law. However, I can change the provision to specify that the “wires” addition applies only after the current date (not 12/31/93). Is that what you want? ] <sup>red</sup>  
On pg. 3, line 8, instead of 5 days per week, make it 3 days per week.

On pg.4, line 6,strike "without compromising track drainage." (Let the railroads seek a waiver if drainage is a problem.)

On pg. 4, line 8, strike "rocks". (Ballast is a rock.)

On pg. 4, line 15, strike that sentence and insert the word "Emergencies."

On pg. 4, line 20, after the word "may" add "after a hearing provided in 195.04 to 195.043,"

On pg. 5, line 6, strike "federal railroad administration" and add "Surface Transportation Board"(The FRA does not classify railroads;rather the STB does.)

On pg.6, it is not clear to me why some of the words are underlined. [The underlined text on lines 2-3, 14-15, and 18 appears in the Minnesota statutes but not in the Wisconsin statutes. I added this text because the instructions were essentially to copy what is in Minnesota law. If you think the underlined text is unnecessary, I would be happy to remove it.]

These are my initial thoughts on the draft you provided. If you have any questions about any of these, let me know.

---

**From:** Gary, Aaron

**Sent:** Friday, April 19, 2013 5:07 PM

**To:** Divine, Kathy

**Subject:** RE: LRB - 1916

Hi Kathy,

Just a couple quick responses. For the most part, these proposed changes look fine. Please see my two questions/responses (in red) below.

Thanks. Aaron

Aaron R. Gary

*Attorney, Legislative Reference Bureau*

608.261.6926 (voice)

608.264.6948 (fax)

[aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

---

**From:** Divine, Kathy

**Sent:** Thursday, April 18, 2013 11:31 AM

**To:** Gary, Aaron

**Subject:** LRB - 1916

Hi Aaron,

Here are some notes we got back from the railroad workers on the draft. If you have questions, you can contact Larry Mann directly if you wish, or we could set up a call to discuss if necessary.

Thanks,

Kathy

---

**From:** Craig Peachy [<mailto:utulo56@gmail.com>]

**Sent:** Thursday, April 18, 2013 8:16 AM

**To:** Rep.Billings; Divine, Kathy

**Cc:** Chris Tassone (LR 0581)

**Subject:** Fwd: Fwd: Safe walkway draft

Hi Cathy,

Below are recommendation from Larry Mann (UTU legal Dept.) with suggestions to the Safe walkway leg. Draft. Could you please see if these changes can be made with the LRB on the draft. I will then send back to Larry for review.

If you have any questions please give me a call.

Thank you

Craig

----- Forwarded message -----

From: **Larry Mann** <[lm.mann@verizon.net](mailto:lm.mann@verizon.net)>  
Date: Thu, Apr 18, 2013 at 8:06 AM  
Subject: Re: Fwd: Safe walkway draft  
To: Craig Peachy <[utulo56@gmail.com](mailto:utulo56@gmail.com)>  
Cc: [Jamesastem@aol.com](mailto:Jamesastem@aol.com), [jrisch@smart-union.org](mailto:jrisch@smart-union.org)

Craig, I have a number of suggestions regarding the draft bill you sent to me. Theses are:  
On pg. 3 line 2, "December 31, 1993" should be a current date. I can't really change this date, which is in current law. However, I can change the provision to specify that the "wires" addition applies only after the current date (not 12/31/93). Is that what you want?  
On pg. 3, line 8, instead of 5 days per week, make it 3 days per week.  
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On pg. 4, line 15, strike that sentence and insert the word "Emergencies."  
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On pg.6, it is not clear to me why some of the words are underlined. The underlined text on lines 2-3, 14-15, and 18 appears in the Minnesota statutes but not in the Wisconsin statutes. I added this text because the instructions were essentially to copy what is in Minnesota law. If you think the underlined text is unnecessary, I would be happy to remove it.

These are my initial thoughts on the draft you provided. If you have any questions about any of these, let me know.

**From:** Craig Peachy  
**Sent:** Wednesday, April 17, 2013 4:20 PM  
**To:** Larry Mann  
**Subject:** Fwd: Safe walkway draft  
Larry,

Here is the Draft.

Thank you for your time.

Craig

--

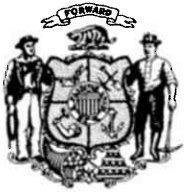
Craig Peachy, Director  
SMART – Transportation Division  
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Office-608 251 4120  
Cell-608-695-6116  
[utulo56@gmail.com](mailto:utulo56@gmail.com)  
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<http://wisconsin.utu.org>





State of Wisconsin  
2013 - 2014 LEGISLATURE

in  
4/23



LRB-1916/11 PZ  
ARG:sac:im

soon

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*you cut*

1 **AN ACT to amend** 192.31 (3), 192.53 (1), 192.53 (4) (b) and 192.53 (5) (a) 2.; and  
2 **to create** 192.51, 192.53 (5e), (5m), and (5s) and 192.55 (8) of the statutes;  
3 **relating to:** railroad track clearance and railroad walkways and providing a  
4 penalty.

---

***Analysis by the Legislative Reference Bureau***

Under current law, most of this state's regulatory authority over railroads resides with the Office of Commissioner of Railroads (OCR), which is generally charged with receiving complaints, conducting hearings, and entering orders related to railroad operations and safety.

Under current law, unless an exception applies, no building or loading platform may be constructed or reconstructed that has a horizontal clearance of less than 8.5 feet between it and the center line of a railroad track. The same horizontal clearance is also required with respect to any material used in and about the construction of a building or loading platform. Certain exceptions apply to platforms at passenger stations used for loading and unloading passengers, baggage, and mail and platforms for handling baggage, mail, and freight to and from cars on other than main tracks. Subject to specified exceptions, a railroad or shipper may not do any of the following: 1) place or construct, within 8.5 feet of the center line of any railroad track, any retaining walls, fences, signs, conveyors, or similar obstructions; or 2) permit, within 8.5 feet of the center line of any railroad track, the accumulation of waste or other material. However, OCR may exempt structures or materials from these horizontal clearance requirements if OCR finds that doing so will not imperil

life or limb and that the public interest requires or permits the exemption from these requirements. Any railroad or shipper that violates these horizontal clearance requirements, or that fails, neglects, or refuses to obey a lawful order of OCR, must forfeit not less than \$100 nor more than \$200.

Current law also prohibits the construction or reconstruction, after December 31, 1993, of any overhead structure that has a vertical clearance of less than 23 feet above the top of the rail of a railroad track. However, OCR may exempt an overhead structure from this minimum vertical clearance requirement if OCR finds that the structure will not imperil life or limb and that the public interest requires or permits the structure to be exempted from the vertical clearance requirement. Telltales (arrangements of long strips of rope, wire, or other material hanging from a bar over railroad tracks to warn of an upcoming low overhead structure) are generally not required above railroad tracks unless required under federal law or unless OCR orders installation of a telltale after finding that the absence of a telltale would create an unreasonable risk of harm to the public or a railroad employee on a railroad not under the jurisdiction of the Federal Railroad Administration (FRA). An employee of a railroad who is injured by or because of the existence of a bridge or other structure over railroad tracks at a height less than 23 feet, which has not been protected by telltales, is not be considered to have assumed the risk of the injury.

Also under current law, whenever a complaint is made with OCR that a railroad bridge lacks walks or railings and is therefore dangerous to railroad employees and the safety of these employees requires alteration of the bridge to provide for walks and railings, or OCR determines that the safety of railroad employees requires the alteration of a railroad bridge, OCR must hold a hearing. After the hearing, OCR may order alteration of the bridge, at the railroad's expense.

This bill requires railroads to provide walkways adjacent to those portions of yard tracks where railroad employees frequently work on the ground performing switching activities. These walkways must meet certain requirements, including that they be at least two feet wide, be maintained in a safe condition, be free of hazards and obstructions, and be surfaced with certain types of materials. These walkway requirements generally apply only to new construction and reconstruction of yard track completed after the bill's effective date (which is approximately six months after enactment) and only to class one and class two rail carriers as classified by the FRA. There are certain exceptions to these walkway requirements and OCR may also waive these requirements under specified circumstances. OCR may also impose these walkway requirements by order if OCR finds that railroad employees who frequently work adjacent to a portion of track performing switching activities are exposed to safety hazards due to the lack of a walkway or to the condition of a walkway constructed on or before the bill's effective date. A railroad that violates these walkway requirements or fails to obey an order made by OCR must forfeit \$500 for each violation.

The bill also creates additional horizontal clearance requirements for railroads. Under the bill, with limited exceptions, a railroad may not construct or reconstruct, after the bill's effective date, any of the following: 1) any railroad track used for moving cars engaged in the movement of traffic the center line of which is within 14

\*  
Federal  
Surface  
Transportation  
Board

feet from the center line of any other parallel track to which it adjoins; 2) any ladder track closer than 19 feet to an adjacent ladder track, as measured from the center line of each track; or 3) any ladder track closer than 17 feet to any other parallel track, as measured from the center line of each track. A railroad also may not permit the space between or beside any railroad tracks that is ordinarily used by employees in the discharge of their duties and that is within 8.5 feet of the center line of the track to become or remain obstructed by a foreign obstacle that will interfere with the work of the employees or subject the employees to any unnecessary hazard. The bill also provides that an employee of a railroad who is injured by or because of the existence of a structure or materials within a distance from tracks that is less than the required horizontal clearance is not ~~be~~<sup>be</sup> considered to have assumed the risk of the injury.

The bill also specifies that, for purposes of required vertical clearance over railroad tracks, wires ~~are~~<sup>are</sup> overhead structures. *insert ANAC*

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 192.31 (3) of the statutes is amended to read:

2           192.31 (3) After December 31, 1993, no overhead structure including wires,

3 shall be constructed or reconstructed, not including ordinary repairs necessary for

4 maintenance, which shall have a vertical clearance of less than 23 feet above the top

5 of rail, except as provided in sub. (4). *insert 3-5*

6           **SECTION 2.** 192.51 of the statutes is created to read:

7           **192.51 Railroad walkways.** (1) In this section, "frequently work" means to

8 work at least <sup>3</sup> days per week, one shift per day.

9           (2) Railroad companies shall provide walkways adjacent to those portions of  
10 yard tracks where railroad company employees frequently work on the ground  
11 performing switching activities.

12           (3) Walkways required under sub. (2) shall satisfy all of the following:

13           (a) Be surfaced with asphalt, concrete, planking, grating, native material,  
14 crushed material, or other similar material. If crushed material is used, 100 percent

1 of the material shall be capable of passing through a 1.5 inch square sieve opening  
2 and at least 90 percent of the material shall be capable of passing through a one inch  
3 square sieve opening, except that a de minimus variation is permissible if the  
4 railroad company has made a good faith effort to comply with these requirements.

5 (b) Have a reasonably uniform surface and be maintained in a safe condition  
6 without compromising track drainage.

7 (c) Be at least 2 feet wide.

8 (d) Be kept reasonably clear of spilled fuel, oil, sand, posts, rocks, and other  
9 hazards or obstructions.

10 (e) For walkways having cross slopes, have cross slopes not exceeding one inch  
11 of elevation for each 8 inches of horizontal length in any direction.

12 (4) (a) Railroad companies are not required to comply with subs. (2) and (3)  
13 during any of the following:

14 1. Maintenance activities. *Emergencies.*

15 2. Any period of heavy rain or snow, derailments, rock and earth slides,  
16 washouts, or similar weather or seismic conditions.

17 3. Any period, after an occurrence identified in subd. 1. or 2., reasonably  
18 necessary to allow the railroad company to return to compliance with subs. (2) and  
19 (3).

20 (b) Upon written application by a railroad company, the office may waive any  
21 portion of sub. (2) or (3) if the office finds that conditions do not reasonably allow  
22 compliance by the railroad company with subs. (2) and (3). If the office waives any  
23 portion of sub. (2) or (3), the findings and order of the office shall set forth, in writing,  
24 the grounds for the waiver and each specific provision of subs. (2) and (3) being  
25 waived.

*insert 4-20*



(5) (a) Except as provided in pars. (b) and (c), this section applies to new construction and reconstruction of yard track completed after the effective date of this paragraph .... [LRB inserts date].

(b) This section does not apply to a railroad company that owns or operates track in this state other than class one and class two rail carriers as classified by the federal ~~railroad administration~~ surface transportation board

(c) 1. If the office finds that railroad company employees who frequently work adjacent to a portion of track performing switching activities are exposed to safety hazards due to the lack of a walkway or to the condition of a walkway constructed on or before the effective date of this paragraph .... [LRB inserts date], the office may order a railroad company to construct a walkway adjacent to a portion of track where employees are performing switching activities, or require a railroad company to modify an existing walkway in conformity with the standards set forth in sub. (3), within a reasonable period of time. Before the office may enter an order under this paragraph, the office shall give notice to the railroad company and hold a hearing in the manner provided in ss. 195.04 to 195.043. After the hearing, the office shall determine what walkway construction or modification, if any, shall be made. The expense of any walkway construction or modification shall be borne by the railroad company.

**SECTION 3.** 192.53 (1) of the statutes is amended to read:

192.53 (1) Except as otherwise provided in this section, no building or loading platform shall be constructed nor shall any addition to or reconstruction of an existing building or loading platform, excluding ordinary repairs necessary for maintenance, be made that shall have a horizontal clearance of less than 8 feet 6 inches between it and the center line of any railroad track. The same clearance shall

1 be maintained between the center line of the railroad track and any material used  
2 in and about the construction of any such building or loading platform, including any  
3 excavated earth or rock.

4 **SECTION 4.** 192.53 (4) (b) of the statutes is amended to read:

5 192.53 (4) (b) The office shall make the findings described in par. (a) only upon  
6 written application to it to exempt the construction or reconstruction of a structure  
7 from the requirements of this section, setting forth fully the grounds therefor, and  
8 only after public hearing held upon notice to all interested parties except that, if no  
9 objection is filed with the office within 20 days of the notice, the office may authorize  
10 the exemption without hearing. The office's findings and order granting the  
11 exemption shall be in writing and shall contain complete provisions and  
12 requirements as to the horizontal clearance to be maintained in the construction or  
13 reconstruction. The structure shall be constructed or reconstructed only in  
14 compliance with the office's order. The office's order may require that warning signs,  
15 of a design and type prescribed by the office, be placed on the structure.

16 **SECTION 5.** 192.53 (5) (a) 2. of the statutes is amended to read:

17 192.53 (5) (a) 2. Permit, within 8 feet 6 inches of the center line of any railroad  
18 track, the accumulation of any rubbish, waste, excavated earth or rock, or material  
19 of any sort, except material used for repair or construction work by the railroad  
20 company.

21 **SECTION 6.** 192.53 (5e), (5m), and (5s) of the statutes are created to read:

22 192.53 (5e) (a) After the effective date of this paragraph .... [LRB inserts date],  
23 except as provided in par. (b), no railroad company may construct or reconstruct, not  
24 including ordinary repairs necessary for maintenance, any of the following:

1           1. Any railroad track used for moving cars engaged in the movement of traffic  
2           the center line of which is within 14 feet from the center line of any other parallel  
3           track to which it adjoins.

4           2. Any ladder track closer than 19 feet to an adjacent ladder track, as measured  
5           from the center line of each track.

6           3. Any ladder track closer than 17 feet to any other parallel track, as measured  
7           from the center line of each track.

8           (b) The distance under par. (a) between tracks may be diminished or closed up  
9           a necessary distance for track intersections, gauntlet tracks, turnouts, or switch  
10          points.

11          **(5m)** No railroad company may permit the space between or beside any  
12          railroad tracks that is ordinarily used by employees in the discharge of their duties  
13          and that is within 8 feet 6 inches of the center line of the track to become or remain  
14          obstructed by a foreign obstacle that will interfere with the work of the employees  
15          or subject the employees to any unnecessary hazard. This space between or beside  
16          the tracks and between the rails of the tracks shall be kept in such a condition as to  
17          permit the employees to pass over or between the tracks or to use the space day or  
18          night and under all weather conditions without any unnecessary hazard.

19          **(5s)** An employee of a railroad company who is injured by or because of the  
20          existence of any structure or material within a distance from tracks that is less than  
21          that required by this section shall not be considered to have assumed the risk of the  
22          injury, although the employee continues in the employ of the railroad company after  
23          the existence of the structure or material has been brought to the employee's  
24          knowledge.

25          **SECTION 7.** 192.55 (8) of the statutes is created to read:

192.55 (8) Any railroad company that violates s. 192.51 or that fails, neglects, or refuses to obey any lawful order made by the office under s. 192.51 shall forfeit \$500 for each violation.

**SECTION 8. Effective date.**

(1) This act takes effect on the first day of the 7th month beginning after publication.

**(END)**

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1916/P2ins  
ARG:.....

1

2           **INSERT ANAL:**

3    (no fl)   constructed or reconstructed after the bill's effective date

4           **INSERT 3-5:**

5    (no fl)   After the effective date of this subsection .... [LRB inserts date], overhead  
6           structure shall include wires.

7

8

9           **INSERT 4-20:**

10   (no fl)   , after a hearing in the manner provided in ss. 195.04 to 195.043,

11

12

13

14

15

## Gary, Aaron

---

**From:** Divine, Kathy  
**Sent:** Thursday, May 02, 2013 5:03 PM  
**To:** Gary, Aaron  
**Subject:** FW: Fwd: FW: Draft review: LRB -1916/P2 Topic: Railroad safety; track clearance and railroad walkways

Hi Aaron,

Did I send you these needed corrections? If I did, I apologize for the duplication.

Thanks,

Kathy

**From:** Craig Peachy [<mailto:utulo56@gmail.com>]  
**Sent:** Thursday, May 02, 2013 5:01 PM  
**To:** Divine, Kathy  
**Subject:** Fwd: Fwd: FW: Draft review: LRB -1916/P2 Topic: Railroad safety; track clearance and railroad walkways

Kathy,

This was the last email I got from Larry to drop lines 17 & 18.

Craig

----- Forwarded message -----

**From:** Larry Mann <[lm.mann@verizon.net](mailto:lm.mann@verizon.net)>  
**Date:** Wed, Apr 24, 2013 at 10:17 AM  
**Subject:** Re: Fwd: FW: Draft review: LRB -1916/P2 Topic: Railroad safety; track clearance and railroad walkways  
**To:** Craig Peachy <[utulo56@gmail.com](mailto:utulo56@gmail.com)>  
**Cc:** "(SMART-UTU) James Stem (NLD)" <[jstem@smart-union.org](mailto:jstem@smart-union.org)>, "(SMART-UTU) John Risch (ANLD)" <[jrisch@smart-union.org](mailto:jrisch@smart-union.org)>, "(SMART-UTU) M. B. Futhey (Pres)" <[MFuthey@smart-union.org](mailto:MFuthey@smart-union.org)>, "Chris Tassone (LR 0581)" <[cjtass1@yahoo.com](mailto:cjtass1@yahoo.com)>

→ Craig, on pg. 4, strike lines 17 and 18. These events are considered "emergencies" covered under 2. Everything else, looks fine.

**From:** Craig Peachy  
**Sent:** Wednesday, April 24, 2013 11:08 AM  
**To:** Larry Mann  
**Cc:** (SMART-UTU) James Stem (NLD) ; (SMART-UTU) John Risch (ANLD) ; (SMART-UTU) M. B. Futhey (Pres) ; Chris Tassone (LR 0581)  
**Subject:** Fwd: FW: Draft review: LRB -1916/P2 Topic: Railroad safety; track clearance and railroad walkways  
Hello Larry,

Please review LRB 2nd Draft on safe walkways.

Thank you,



State of Wisconsin  
2013 - 2014 LEGISLATURE

TODAY



LRB-1916/P3  
ARG:sac:0

in 5/3

KMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

One fix - p. 4

- gen cat

- 1 AN ACT *to amend* 192.31 (3); and *to create* 192.51, 192.53 (5e), (5m), and (5s)  
2 and 192.55 (8) of the statutes; **relating to:** railroad track clearance and  
3 railroad walkways and providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

Under current law, most of this state's regulatory authority over railroads resides with the Office of Commissioner of Railroads (OCR), which is generally charged with receiving complaints, conducting hearings, and entering orders related to railroad operations and safety.

Under current law, unless an exception applies, no building or loading platform may be constructed or reconstructed that has a horizontal clearance of less than 8.5 feet between it and the center line of a railroad track. The same horizontal clearance is also required with respect to any material used in and about the construction of a building or loading platform. Certain exceptions apply to platforms at passenger stations used for loading and unloading passengers, baggage, and mail and platforms for handling baggage, mail, and freight to and from cars on other than main tracks. Subject to specified exceptions, a railroad or shipper may not do any of the following: 1) place or construct, within 8.5 feet of the center line of any railroad track, any retaining walls, fences, signs, conveyors, or similar obstructions; or 2) permit, within 8.5 feet of the center line of any railroad track, the accumulation of waste or other material. However, OCR may exempt structures or materials from these horizontal clearance requirements if OCR finds that doing so will not imperil life or limb and that the public interest requires or permits the exemption from these requirements. Any railroad or shipper that violates these horizontal clearance

requirements, or that fails, neglects, or refuses to obey a lawful order of OCR, must forfeit not less than \$100 nor more than \$200.

Current law also prohibits the construction or reconstruction, after December 31, 1993, of any overhead structure that has a vertical clearance of less than 23 feet above the top of the rail of a railroad track. However, OCR may exempt an overhead structure from this minimum vertical clearance requirement if OCR finds that the structure will not imperil life or limb and that the public interest requires or permits the structure to be exempted from the vertical clearance requirement. Telltales (arrangements of long strips of rope, wire, or other material hanging from a bar over railroad tracks to warn of an upcoming low overhead structure) are generally not required above railroad tracks unless required under federal law or unless OCR orders installation of a telltale after finding that the absence of a telltale would create an unreasonable risk of harm to the public or a railroad employee on a railroad not under the jurisdiction of the Federal Railroad Administration. An employee of a railroad who is injured by or because of the existence of a bridge or other structure over railroad tracks at a height less than 23 feet, which has not been protected by telltales, is not be considered to have assumed the risk of the injury.

Also under current law, whenever a complaint is made with OCR that a railroad bridge lacks walks or railings and is therefore dangerous to railroad employees and the safety of these employees requires alteration of the bridge to provide for walks and railings, or OCR determines that the safety of railroad employees requires the alteration of a railroad bridge, OCR must hold a hearing. After the hearing, OCR may order alteration of the bridge, at the railroad's expense.

This bill requires railroads to provide walkways adjacent to those portions of yard tracks where railroad employees frequently work on the ground performing switching activities. These walkways must meet certain requirements, including that they be at least two feet wide, be maintained in a safe condition, be free of hazards and obstructions, and be surfaced with certain types of materials. These walkway requirements generally apply only to new construction and reconstruction of yard track completed after the bill's effective date (which is approximately six months after enactment) and only to class one and class two rail carriers as classified by the federal Surface Transportation Board. There are certain exceptions to these walkway requirements and OCR may also waive these requirements under specified circumstances. OCR may also impose these walkway requirements by order if OCR finds that railroad employees who frequently work adjacent to a portion of track performing switching activities are exposed to safety hazards due to the lack of a walkway or to the condition of a walkway constructed on or before the bill's effective date. A railroad that violates these walkway requirements or fails to obey an order made by OCR must forfeit \$500 for each violation.

The bill also creates additional horizontal clearance requirements for railroads. Under the bill, with limited exceptions, a railroad may not construct or reconstruct, after the bill's effective date, any of the following: 1) any railroad track used for moving cars engaged in the movement of traffic the center line of which is within 14 feet from the center line of any other parallel track to which it adjoins; 2) any ladder track closer than 19 feet to an adjacent ladder track, as measured from the center line



of each track; or 3) any ladder track closer than 17 feet to any other parallel track, as measured from the center line of each track. A railroad also may not permit the space between or beside any railroad tracks that is ordinarily used by employees in the discharge of their duties and that is within 8.5 feet of the center line of the track to become or remain obstructed by a foreign obstacle that will interfere with the work of the employees or subject the employees to any unnecessary hazard. The bill also provides that an employee of a railroad who is injured by or because of the existence of a structure or materials within a distance from tracks that is less than the required horizontal clearance is not considered to have assumed the risk of the injury.

The bill also specifies that, for purposes of required vertical clearance over railroad tracks, wires constructed or reconstructed after the bill's effective date are overhead structures.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 192.31 (3) of the statutes is amended to read:

2           192.31 (3) After December 31, 1993, no overhead structure shall be constructed  
3 or reconstructed, not including ordinary repairs necessary for maintenance, which  
4 shall have a vertical clearance of less than 23 feet above the top of rail, except as  
5 provided in sub. (4). After the effective date of this subsection .... [LRB inserts date],  
6 overhead structure shall include wires.

7           **SECTION 2.** 192.51 of the statutes is created to read:

8           **192.51 Railroad walkways.** (1) In this section, "frequently work" means to  
9 work at least 3 days per week, one shift per day.

10          (2) Railroad companies shall provide walkways adjacent to those portions of  
11 yard tracks where railroad company employees frequently work on the ground  
12 performing switching activities.

13          (3) Walkways required under sub. (2) shall satisfy all of the following:

1 (a) Be surfaced with asphalt, concrete, planking, grating, native material,  
2 crushed material, or other similar material. If crushed material is used, 100 percent  
3 of the material shall be capable of passing through a 1.5 inch square sieve opening  
4 and at least 90 percent of the material shall be capable of passing through a one inch  
5 square sieve opening, except that a de minimus variation is permissible if the  
6 railroad company has made a good faith effort to comply with these requirements.

7 (b) Have a reasonably uniform surface and be maintained in a safe condition.

8 (c) Be at least 2 feet wide.

9 (d) Be kept reasonably clear of spilled fuel, oil, sand, posts, and other hazards  
10 or obstructions.

11 (e) For walkways having cross slopes, have cross slopes not exceeding one inch  
12 of elevation for each 8 inches of horizontal length in any direction.

13 (4) (a) Railroad companies are not required to comply with subs. (2) and (3)  
14 during any of the following:

15 1. Maintenance activities.

16 2. Emergencies.

17 Any period of heavy rain or snow, derailments, rock and earth slides, washouts,  
18 or similar weather or seismic conditions.

19 3. Any period, after an occurrence identified in subd. 1. or 2., reasonably  
20 necessary to allow the railroad company to return to compliance with subs. (2) and  
21 (3).

22 (b) Upon written application by a railroad company, the office may, after a  
23 hearing in the manner provided in ss. 195.04 to 195.043, waive any portion of sub.  
24 (2) or (3) if the office finds that conditions do not reasonably allow compliance by the  
25 railroad company with subs. (2) and (3). If the office waives any portion of sub. (2)

1 or (3), the findings and order of the office shall set forth, in writing, the grounds for  
2 the waiver and each specific provision of subs. (2) and (3) being waived.

3 (5) (a) Except as provided in pars. (b) and (c), this section applies to new  
4 construction and reconstruction of yard track completed after the effective date of  
5 this paragraph .... [LRB inserts date].

6 (b) This section does not apply to a railroad company that owns or operates  
7 track in this state other than class one and class two rail carriers as classified by the  
8 federal surface transportation board.

9 (c) 1. If the office finds that railroad company employees who frequently work  
10 adjacent to a portion of track performing switching activities are exposed to safety  
11 hazards due to the lack of a walkway or to the condition of a walkway constructed  
12 on or before the effective date of this paragraph .... [LRB inserts date], the office may  
13 order a railroad company to construct a walkway adjacent to a portion of track where  
14 employees are performing switching activities, or require a railroad company to  
15 modify an existing walkway in conformity with the standards set forth in sub. (3),  
16 within a reasonable period of time. Before the office may enter an order under this  
17 paragraph, the office shall give notice to the railroad company and hold a hearing in  
18 the manner provided in ss. 195.04 to 195.043. After the hearing, the office shall  
19 determine what walkway construction or modification, if any, shall be made. The  
20 expense of any walkway construction or modification shall be borne by the railroad  
21 company.

22 **SECTION 3.** 192.53 (5e), (5m) and (5s) of the statutes are created to read:

23 192.53 (5e) (a) After the effective date of this paragraph .... [LRB inserts date],  
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4           2. Any ladder track closer than 19 feet to an adjacent ladder track, as measured  
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16 the tracks and between the rails of the tracks shall be kept in such a condition as to  
17 permit the employees to pass over or between the tracks or to use the space day or  
18 night and under all weather conditions without any unnecessary hazard.

19           **(5s)** An employee of a railroad company who is injured by or because of the  
20 existence of any structure or material within a distance from tracks that is less than  
21 that required by this section shall not be considered to have assumed the risk of the  
22 injury, although the employee continues in the employ of the railroad company after  
23 the existence of the structure or material has been brought to the employee's  
24 knowledge.

25           **SECTION 4.** 192.55 (8) of the statutes is created to read:

192.55 (8) Any railroad company that violates s. 192.51 or that fails, neglects, or refuses to obey any lawful order made by the office under s. 192.51 shall forfeit \$500 for each violation.

**SECTION 5. Effective date.**

(1) This act takes effect on the first day of the 7th month beginning after publication.

**(END)**



State of Wisconsin  
2013 - 2014 LEGISLATURE

TODAY



LRB-1916/1

ARG:sac:ph

in 5/3

stays RMN

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

5/3 - per Kathy - looks good, wants /

No changes - edited today

Regen

- 1 AN ACT to amend 192.31 (3); and to create 192.51, 192.53 (5e), (5m), and (5s)  
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requirements, or that fails, neglects, or refuses to obey a lawful order of OCR, must forfeit not less than \$100 nor more than \$200.

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This bill requires railroads to provide walkways adjacent to those portions of yard tracks where railroad employees frequently work on the ground performing switching activities. These walkways must meet certain requirements, including that they be at least two feet wide, be maintained in a safe condition, be free of hazards and obstructions, and be surfaced with certain types of materials. These walkway requirements generally apply only to new construction and reconstruction of yard track completed after the bill's effective date (which is approximately six months after enactment) and only to class one and class two rail carriers as classified by the federal Surface Transportation Board. There are certain exceptions to these walkway requirements and OCR may also waive these requirements under specified circumstances. OCR may also impose these walkway requirements by order if OCR finds that railroad employees who frequently work adjacent to a portion of track performing switching activities are exposed to safety hazards due to the lack of a walkway or to the condition of a walkway constructed on or before the bill's effective date. A railroad that violates these walkway requirements or fails to obey an order made by OCR must forfeit \$500 for each violation.

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of each track; or 3) any ladder track closer than 17 feet to any other parallel track, as measured from the center line of each track. A railroad also may not permit the space between or beside any railroad tracks that is ordinarily used by employees in the discharge of their duties and that is within 8.5 feet of the center line of the track to become or remain obstructed by a foreign obstacle that will interfere with the work of the employees or subject the employees to any unnecessary hazard. The bill also provides that an employee of a railroad who is injured by or because of the existence of a structure or materials within a distance from tracks that is less than the required horizontal clearance is not considered to have assumed the risk of the injury.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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8           **192.51 Railroad walkways.** (1) In this section, “frequently work” means to  
9 work at least 3 days per week, one shift per day.

10          (2) Railroad companies shall provide walkways adjacent to those portions of  
11 yard tracks where railroad company employees frequently work on the ground  
12 performing switching activities.

13          (3) Walkways required under sub. (2) shall satisfy all of the following:



1 (a) Be surfaced with asphalt, concrete, planking, grating, native material,  
2 crushed material, or other similar material. If crushed material is used, 100 percent  
3 of the material shall be capable of passing through a 1.5 inch square sieve opening  
4 and at least 90 percent of the material shall be capable of passing through a one inch  
5 square sieve opening, except that a de minimus variation is permissible if the  
6 railroad company has made a good faith effort to comply with these requirements.

7 (b) Have a reasonably uniform surface and be maintained in a safe condition.

8 (c) Be at least 2 feet wide.

9 (d) Be kept reasonably clear of spilled fuel, oil, sand, posts, and other hazards  
10 or obstructions.

11 (e) For walkways having cross slopes, have cross slopes not exceeding one inch  
12 of elevation for each 8 inches of horizontal length in any direction.

13 (4) (a) Railroad companies are not required to comply with subs. (2) and (3)  
14 during any of the following:

15 1. Maintenance activities.

16 2. Emergencies.

17 3. Any period, after an occurrence identified in subd. 1. or 2., reasonably  
18 necessary to allow the railroad company to return to compliance with subs. (2) and  
19 (3).

20 (b) Upon written application by a railroad company, the office may, after a  
21 hearing in the manner provided in ss. 195.04 to 195.043, waive any portion of sub.  
22 (2) or (3) if the office finds that conditions do not reasonably allow compliance by the  
23 railroad company with subs. (2) and (3). If the office waives any portion of sub. (2)  
24 or (3), the findings and order of the office shall set forth, in writing, the grounds for  
25 the waiver and each specific provision of subs. (2) and (3) being waived.

1           (5) (a) Except as provided in pars. (b) and (c), this section applies to new  
2 construction and reconstruction of yard track completed after the effective date of  
3 this paragraph .... [LRB inserts date].

4           (b) This section does not apply to a railroad company that owns or operates  
5 track in this state other than class one and class two rail carriers as classified by the  
6 federal surface transportation board.

7           (c) 1. If the office finds that railroad company employees who frequently work  
8 adjacent to a portion of track performing switching activities are exposed to safety  
9 hazards due to the lack of a walkway or to the condition of a walkway constructed  
10 on or before the effective date of this paragraph .... [LRB inserts date], the office may  
11 order a railroad company to construct a walkway adjacent to a portion of track where  
12 employees are performing switching activities, or require a railroad company to  
13 modify an existing walkway in conformity with the standards set forth in sub. (3),  
14 within a reasonable period of time. Before the office may enter an order under this  
15 paragraph, the office shall give notice to the railroad company and hold a hearing in  
16 the manner provided in ss. 195.04 to 195.043. After the hearing, the office shall  
17 determine what walkway construction or modification, if any, shall be made. The  
18 expense of any walkway construction or modification shall be borne by the railroad  
19 company.

20           **SECTION 3.** 192.53 (5e), (5m) and (5s) of the statutes are created to read:

21           192.53 (5e) (a) After the effective date of this paragraph .... [LRB inserts date],  
22 except as provided in par. (b), no railroad company may construct or reconstruct, not  
23 including ordinary repairs necessary for maintenance, any of the following:

1           1. Any railroad track used for moving cars engaged in the movement of traffic  
2           the center line of which is within 14 feet from the center line of any other parallel  
3           track to which it adjoins.

4           2. Any ladder track closer than 19 feet to an adjacent ladder track, as measured  
5           from the center line of each track.

6           3. Any ladder track closer than 17 feet to any other parallel track, as measured  
7           from the center line of each track.

8           (b) The distance under par. (a) between tracks may be diminished or closed up  
9           a necessary distance for track intersections, gauntlet tracks, turnouts, or switch  
10          points.

11          **(5m)** No railroad company may permit the space between or beside any  
12          railroad tracks that is ordinarily used by employees in the discharge of their duties  
13          and that is within 8 feet 6 inches of the center line of the track to become or remain  
14          obstructed by a foreign obstacle that will interfere with the work of the employees  
15          or subject the employees to any unnecessary hazard. This space between or beside  
16          the tracks and between the rails of the tracks shall be kept in such a condition as to  
17          permit the employees to pass over or between the tracks or to use the space day or  
18          night and under all weather conditions without any unnecessary hazard.

19          **(5s)** An employee of a railroad company who is injured by or because of the  
20          existence of any structure or material within a distance from tracks that is less than  
21          that required by this section shall not be considered to have assumed the risk of the  
22          injury, although the employee continues in the employ of the railroad company after  
23          the existence of the structure or material has been brought to the employee's  
24          knowledge.

25          **SECTION 4.** 192.55 (8) of the statutes is created to read:

192.55 (8) Any railroad company that violates s. 192.51 or that fails, neglects, or refuses to obey any lawful order made by the office under s. 192.51 shall forfeit \$500 for each violation.

**SECTION 5. Effective date.**

(1) This act takes effect on the first day of the 7th month beginning after publication.

**(END)**

**Parisi, Lori**

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**From:** Divine, Kathy  
**Sent:** Monday, November 18, 2013 3:14 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1916/1 Topic: Railroad safety; track clearance and railroad walkways

Please Jacket LRB -1916/1 for the ASSEMBLY.